

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL CLOUD,

Plaintiff,

VS.

CASE NO. 3:20-cv-01277-S

THE BERT BELL/PETE ROZELLE
NFL PLAYER RETIREMENT PLAN,

Defendant.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
HEARD BEFORE THE HONORABLE KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

OCTOBER 14, 2021

APPEARANCES:

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A P P E A R A N C E S
(Continued)

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I N D E X

PAGE

Appearances.....	1
Proceedings.....	4
Adjournment.....	10
Reporter's Certificate.....	11

P R O C E E D I N G S

(Call to order of the court.)

THE COURT: The Court calls Civil Action 3:20-cv-1277-S, Michael Cloud versus the Bert Bell/Pete Rozelle NFL Player Retirement Plan.

Counsel, please state your appearance on this telephonic hearing record. On behalf of the Plaintiff?

MR. DENNIE: Christian Dennie, Barlow Garsek & Simon, on behalf of Plaintiff Michael Cloud.

THE COURT: Thank you.

And on behalf of the Defendant?

MR. MEEHAN: Edward Meehan from the Groom Law Group. And with me on the telephone today is Michael Junk and Samuel Levin, both of the Groom Law Group.

THE COURT: Thank you.

Let's go off the record because there's several things that I'd like to chat off the record.

(Off the record.)

THE COURT: Back on the record.

Counsel, while we were off the record for quite a while, we had a very productive discussion of many issues in this litigation primarily dealing with discovery. There was a request by the parties for more clarity on the Court's Memorandum Opinion and Order, ECF Document 71, which was filed on September 30, 2021. The Court gave the clarity.

1 And I'm giving Defense counsel on behalf of the
2 team that's before the Court today, Mr. Meehan, the -- I'm
3 going to ask Mr. Meehan to take the lead on his understanding
4 of the items that weren't in dispute that you needed further
5 clarity on. So go ahead, Mr. Meehan.

6 And listen carefully, Mr. Dennie.

7 MR. MEEHAN: Thank you, Your Honor. This is
8 Mr. Meehan.

9 So both parties had worked out a schedule for the
10 taking of the two board depositions. We have agreed that both
11 will take place in Dallas. The dates that we have identified
12 at this point are December -- I'm sorry -- October 21 for
13 Robert Smith and then we have also identified October 28 for
14 Richard Cass. In light of today's discussion where there were
15 some questions asked and some indications given of Your Honor's
16 position and interpretation of the order, here's where I
17 understand us to be in terms of the document and information
18 production.

19 It is -- with respect to the director reports,
20 Your Honor, it is intending that the Defendant should turn over
21 the director reports to the extent that they concern the
22 Defendant. So the Retirement Plan, those director reports or
23 portions of director reports concerning the Retirement Plan
24 will be produced is what we understand Your Honor to be
25 directing us to do.

1 With respect to counsel reports, the
2 clarification that we obtained today was that the Court was
3 intending that term to refer to what we have sometimes called
4 "claim summaries" that counsel prepares -- the Groom Law Group
5 prepares for the Board in advance of the decisionmaking that
6 takes place at the quarterly board meetings. And -- and we
7 understand those are being directed to be produced, but limited
8 to the categories of Active Football and Inactive A, not for
9 any other categories.

10 And then, thirdly, with respect to the database
11 that has been referred to, that we are being directed to
12 produce the information from the database which was created in
13 or around 2013 and reflects information, again, concerning
14 those same two categories -- the Active Football and the
15 Inactive A. We had shared -- by "we" I mean, you know, myself
16 with Mr. Dennie. We -- we have provided to Mr. Cloud's
17 counsel, Mr. Dennie, a set of the column headings for that
18 database, and the parties are going to work together to
19 identify the columns that should generate the data concerning
20 those two categories of -- of benefits that are at issue.

21 I need to step back, as I've indicated to the
22 Court, to determine how long it will take us to produce that
23 information. Our goal is to get it done as quickly as
24 possible, but given that -- I believe counsel for Mr. Cloud
25 indicated that he needed some time before the depositions, and

1 I believe Your Honor was indicating that a period of five days,
2 at minimum, should be provided. So that is currently
3 suggesting that the deposition scheduled for the 21st is not
4 going to be able to take place because -- unless -- I am very
5 much surprised, when I consult further -- we will not be able
6 to produce all that information to allow the five days in
7 advance since that deposition is only a week from today.

8 So I believe where we are now is that we are
9 hoping to hold the deposition of Mr. Cass as scheduled in
10 Dallas on the 28th. And we are likely to have to reschedule
11 Mr. Smith, and the parties will cooperate to try to get that
12 done as soon as possible, as efficiently as possible.

13 I believe that's where we are, other than that
14 the Court has indicated that if we need to adjust the schedule
15 somewhat, that the Court is going to be open to where the
16 parties, within reason, agree to make changes to the schedule
17 so long as we keep Your Honor informed of anything that would
18 affect Your Honor's schedule.

19 And I guess I'll ask then -- I would say that I
20 believe we picked up in this conference was Your Honor has
21 entered the protective order that the parties have jointly
22 agreed upon and so, at this point, to the extent we provide the
23 information we're deemed directed to, one of our concerns is to
24 maintain as confidentiality while preserving, obviously, our
25 arguments about what is or -- or is not relevant. So we may be

1 using that protective order to designate some or, perhaps, all
2 of these materials as confidential. And we will, obviously,
3 work through that in the most productive way we can with
4 counsel for Mr. Cloud and, hopefully, resolve any issues in
5 that regard.

6 I believe, Your Honor, that's a pretty fair
7 summary of where we came out of Your Honor's guidance while we
8 were chatting before going back on the record.

9 THE COURT: Mr. Meehan, I believe that's a very
10 accurate summary, but I would like to hear from Mr. Dennie if
11 he agrees.

12 MR. DENNIE: I agree with most of it, Your Honor. My
13 one point that I wanted to make sure that I'm understanding
14 we're on the same page is the counsel's report. And the reason
15 we have even requested the counsel's report is because there's
16 testimony that was given by Chris Smith where she said there
17 was information in there addition to litigation. So I
18 understand that information about active litigation to be
19 privileged, but based -- you know, based on the case as we've
20 previously submitted, matters that aren't in litigation, the
21 actual client or the Groom law firm or the beneficiaries, like
22 Mike Cloud. So I just want to be clear that when we're talking
23 about the counsel's reports, that what's being excluded or
24 redacted would be ongoing current litigation, not --

25 THE COURT: No. Mr. Dennie, your understanding is not

1 accurate. As far as counsel reports at this time both to
2 include what is referred to as claim summary, which was
3 described to me off the record on what was handed to the Board
4 or reviewed by the Board or Committee in connection with your
5 claims, denial or granting of benefits. It is not going to --
6 I don't think there's any redaction involved. This is simply
7 the documents that were handed to the Board.

8 Mr. Meehan, did I call those documents by name
9 correctly? Claim summary prepared by counsel?

10 MR. MEEHAN: Correct, Your Honor. Yes. And the Court
11 is also correct as far as those claim summaries prepared by
12 counsel, the Groom Law Group, we do not contemplate any
13 redactions other than what we're already -- by agreement is
14 redacted. The personal identifying affirmation -- that
15 information. But the content, the substance, no, we don't plan
16 any redactions. We don't view that as -- as invoking these
17 privileged concerns.

18 THE COURT: Okay. So any other disagreement with what
19 the Court said off the record on the intent of the Court's
20 order on this discovery, Mr. Dennie?

21 MR. DENNIE: No, Your Honor.

22 THE COURT: Okay. Then I think it's part of the
23 transcript of the record. I look forward to really not hearing
24 from you-all, but if I do, I've given you instructions on how
25 to communicate to the Court going forward.

1 And is there anything else for the record,
2 Mr. Dennie?

3 MR. DENNIE: No, Your Honor.

4 THE COURT: Anything else for the record, Mr. Meehan?

5 MR. MEEHAN: No, Your Honor, other than to thank you
6 very much for all the time you've taken.

7 THE COURT: Thank you. Take care. Bye-bye.

8 Court is adjourned.

9 (WHEREUPON, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

I, Thu Bui, CRR, RMR, Official Court Reporter,
United States District Court, Northern District of Texas, do
hereby certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of the proceedings in the above-entitled and
numbered matter.

/s/ Thu Bui
Official Court Reporter